

STATE OF NORTH DAKOTA
BURLEIGH COUNTY

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
CASE NO. 08-C-11- _____

Neal W. Schmidt,

Plaintiff,

vs.

ALW Sourcing, LLC,

Defendant

SUMMONS

TO EACH DEFENDANT SERVED WITH THIS SUMMONS:

You are summoned and required to appear and defend against the Complaint in this action, which is served on you, by serving on the attorney for the Plaintiff an answer or other proper response within twenty days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

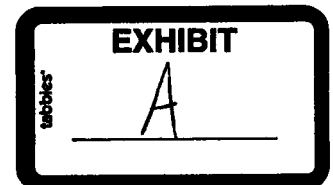
Dated January 31, 2011.

/s/ John J. Gosbee
John J. Gosbee (#3967)
Attorney for Plaintiff
P.O. Box 474
Fort Yates, ND 58538-0474
(701) 663-2225
[jgosbee@gosbeelaw.com]

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Summons
January 31, 2011

GOSBEE LAW OFFICE
P.O. Box 474
Fort Yates, ND 58538-0474
(701) 663-2225



STATE OF NORTH DAKOTA
BURLEIGH COUNTY

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
CASE NO. 08-C-11- _____

Neal W. Schmidt,

Plaintiff,

vs.

ALW Sourcing, LLC,

Defendant

COMPLAINT

As a claim for relief, the Plaintiff, Neal W. Schmidt (Consumer), states the paragraphs that follow. As necessary, each paragraph relates to all other paragraphs, without any necessity of repetition.

I. PARTIES.

1. Consumer is a "consumer" as that term is defined in the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §1692 et seq.
2. Defendant ALW Sourcing, LLC (Collector) is a Maryland limited liability company in the business of "collection of delinquent account receivables" [sic], according to its corporate listing with the North Dakota Secretary of State. In the course of its business, Collector

regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another. Collector tried to collect from Consumer an alleged "debt," as that term is defined in FDCPA. Accordingly, Collector is a "debt collector" as defined in FDCPA.

II. BACKGROUND FACTS.

3. On about January 29, 2011, Consumer received a letter from Collector, claiming that Consumer owed Discover Product, Inc., account number ending in 5481 (the Discover Account). The amount claimed due was \$6,435.42. Collector offered to settle the claim for \$2,547.17. With some personal information redacted, an accurate copy of Collector's letter is attached as Exh. NWS-101.
4. In fact, Consumer owed nothing on the asserted claim. Consumer was sued in 2006 by Discover Bank over the very same Discover Account, in South Central Judicial District Court for Burleigh Count, Case No. 08-06-C-0284 (the 2006 Case). The 2006 Case also involved an account number allegedly ending in 5481. An accurate copy of the Complaint in the 2006 Case is attached as Exh. NWS-102. To show that the 2006 Case involved the same Discover

Account, an accurate copy, with some personal information redacted, of Discover's discovery responses in the 2006 Case is attached as Exh. NWS-103. The account number appears on pp. 4-6 of Exh. NWS-103. By serving this Complaint, counsel represents that the entire account number is the same in both Exhs. NWS-101 and NWS-103. The 2006 Case was settled and dismissed with prejudice. An accurate copy of the judgment of dismissal in the 2006 Case is attached as Exh. NWS-104. Therefore, Consumer owed nothing on the claim asserted by Collector.

5. This is the second time in less than three months a debt collector has tried to collect the alleged Discover Account from Consumer. Obviously, Collector did nothing to check to see if the claim was properly owing.

III. FDCPA VIOLATIONS.

6. Under FDCPA, Collector violated FDCPA generally by engaging in a deceptive and abusive debt collection practice, namely trying to collect a debt which had been previously litigated adverse to Collector's claim. Further, Collector's actions were deceptive and abusive because nobody at Collector made even the slightest effort to check to see if the Discover Account claim was

legitimate.

IV. DAMAGES.

7. As a result of the FDCPA violations by Collector, Consumer experienced wounded feelings, mental suffering, humiliation, degradation, and disgrace, as those elements are allowed in measuring compensatory damages under *Stoner v. Nash Finch*, 446 N.W.2d 747, 753 (N.D. 1989). The reasonable value of Consumer's damages is at least \$50,000.00.

V. RELIEF REQUESTED

THEREFORE, Consumer asks that the Court award him the relief specified in the paragraphs that follow.

8. For a judgment of at least \$50,000.00 against Collector for violation of FDCPA.
9. For an award of statutory damages of \$1,000.00, attorney fees, and costs for the FDCPA violations.
10. On all issues so triable, for trial by a jury of at least 9 members.
11. For such other relief, legal and equitable, to which Consumer shows he is entitled as supported by the evidence adduced at trial.

Signature page follows.

Dated January 31, 2011.

/s/ John J. Gosbee
John J. Gosbee (#3967)
Attorney for Plaintiff
P.O. Box 474
Fort Yates, ND 58538-0474
(701) 663-2225
[jgosbee@gosbeelaw.com]

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Discover Fin. Svcs. Inc.

Plaintiff,

vs

Neal W. Schmidt,

Defendant.

COMPLAINT

CIVIL No. 06 C 0284

PLAINTIFF, for its cause of action against the Defendant, states:

I.


The Defendant is indebted to the Plaintiff in the sum of \$6,523.42 plus interest which continues to accrue for services rendered by the above plaintiff.

II.

Demand has been made for payment of the above account, but the account has not been paid.

WHEREFORE, Plaintiff prays for judgment against the Defendant in the sum of \$6,523.42, plus interest which continues to accrue; for its costs and disbursements herein; and for such other and further relief as the court deems just and equitable.

Dated at Minot, North Dakota, January 5th, 2006


William C. Worthington, Jr.(N.D.ID#03357)
WORTHINGTON LAW FIRM
P.O. Box 2087
Minot, ND 58702-2087
(701) 852-5513
Our File No. 05-6182
ATTORNEY FOR THE PLAINTIFF

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED
WILL BE USED FOR THAT PURPOSE.

RECEIVED & FILED

FEB 14 2006

Exh. NWS-102 of Co. Burleigh Co.

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STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
CIVIL NO. 08-06-
C-0284

Discover Bank,

Plaintiff,

-vs-

Neal W. Schmidt,

Defendant.

SCHMIDT'S DISCOVERY REQUEST, SET NO. 1

In accordance with Rules 33 et seq., NDRCivP, the Defendant, Neal W. Schmidt (Schmidt), submits this discovery request addressed to the Plaintiff. Discover Fin. Svcs., LLC.,(DFS), the serving affiliate of Discover Bank.

DEFINITIONS AND GENERAL INSTRUCTIONS

As used in this Request, the following terms have the meanings indicated:

- D-01. "Charge" means any increase in the amount DFS claims Schmidt owed it on the Schmidt Account.
- D-02. "Credit" means any increase in the amount DFS claims Schmidt owed it on the Schmidt Account.
- D-03. "Schmidt Account" means the account with DFS that is the subject of this lawsuit.

Interrogatories (designation I-xx) are propounded under and governed by Rule 33, NDRCivP. Requests for Production (designation RFP-xx) are propounded under Rule 34, NDRCivP.

INTERROGATORIES

- I-01. Please identify at least one individual whose deposition may be taken, as permitted under Rule 30(b) (6) , NDRCivP, who can, either through existing personal knowledge or adequate preparation and research, testify as to matters known or reasonably available to DFS, with respect to each of the following matters:

RESPONSE: Unknown at this time

a. How each charge was calculated and posted to the Schmidt Account.

RESPONSE: See attached statements.

How each credit was calculated and posted to the Schmidt Account.

RESPONSE: See attached statements

I-02. Do you plan to call any witnesses at trial. If so, please identify each witness you plan to call, the substance of that person's testimony, and the basis of that witness's knowledge of the subjects on which the witness will testify.

RESPONSE: Unknown at this time.

I-03. Please identify each person who prepared DFS's response to this discovery request, and each person who assisted in that preparation.

RESPONSE: Unknown at this time.

REQUESTS FOR PRODUCTION

RFP-01. With respect to each charge to the Schmidt Account, please produce at least the following items:

a. A description of the goods or services provided including as well entity supplying the goods or services, the date the goods or services were provided.

RESPONSE: This is impossible to determine, as each merchant keeps his own receipts.

b. Evidence that Schmidt personally procured the goods or services, or otherwise authorized the charge.

RESPONSE: The only way to get this information is from the merchant.

c. In the case of a charge which required calculation based on another amount (e.g., interest, finance charge, late payment fees, etc.), the precise method by which that charge was calculated.

RESPONSE: See attached statements.

RFP-02. With respect to each credit to the Schmidt Account, please produce at least the following items:

a. A description of the reason for the credit.

RESPONSE: N/A

b. Evidence that the credit was properly determined.

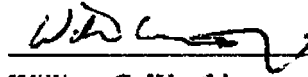
c. In the case of a credit which required calculation based on another amount (e.g., interest, finance charge, late payment fees, etc.), the precise method by which that credit was calculated.

RESPONSE: See attached statements.

RFP-03. If there is any tangible thing that you plan to offer as an exhibit at trial, and hasn't been produced in response to another RFP, please produce each such other tangible thing.

RESPONSE: N/A

Dated: April 12, 2006



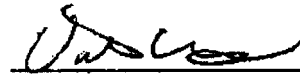
William C. Worthington, Jr., Esq.
P.O. Box 2087
Minot, ND 58702-2087
701/852-5513

CERTIFICATION OF SERVICE

In accordance with Rule 5(f), NDR CivP, I certify that I have served Defendant's Discovery Request (Set No. 1) by mailing a copy to:

Neal W. Schmidt
1038 West Avenue B
Bismarck, ND 58501-2406

Dated: April 12, 2006



William C. Worthington, Jr. Esq.

DISCOVER
CARDnew balance
\$8,523.42minimum payment due
\$905.00account number 5481
enter amount enclosed belowpayment due date
September 2, 2003Please make check payable to Discover Card. You are
overlimit. Pay the sum of the monthly minimum
payment plus the overlimit amount of \$2,523.42.

03 SD SNA01 0003086

NEAL W SCHMIDT

BISMARCK ND 58501-

NOV 6 9 2003

Consolidate bills quickly and securely
with a Balance Transfer to your Discover
Card - Call 1-877-363-0000 TODAY!

BRO

PO BOX 30395
SALT LAKE CITY UT 84130-0395Address or telephone change? Please print change in the space above,
or go to Discovercard.com.

000006011008040635481065234200000000090500

11-8-05

TAM

Discover Card Account Summary

Closing Date: August 3, 2003

page 1 of 3

account number	<input type="text"/> 5481
payment due date	September 2, 2003
minimum payment due	\$905.00
credit limit	\$4,000.00
credit available	\$0.00
cash credit limit	\$2,000.00
cash credit available	\$0.00

previous balance	\$6,345.82
payments and credits	- 0.00
purchases	+ 58.00
cash advances	+ 0.00
balance transfers	+ 0.00
FINANCE CHARGES	+ 119.60
new balance	= \$8,523.42

You may be able to avoid Periodic Finance Charges, see
the reverse side for details.

Cashback Bonus*

Cashback Bonus® Anniversary Date: February 3

Previous Cashback Bonus Award Balance	\$ 0.00
Purchase Award This Period	+ 0.00
Cashback Bonus Award Total	0.00
Redemptions This Period	- 0.00

Cashback Bonus Award Balance	\$ 0.00
Award Available to Redeem	\$ 0.00

Transactions

trans. date	post date		
previous statement balances		FINANCE CHARGES: OLD BALANCE	\$ 0.00
		FINANCE CHARGES: CASH	0.00
		FINANCE CHARGES: PURCHASES	0.00
		FINANCE CHARGES: BALANCE TRANSFERS	0.00
		PRINCIPAL: OLD BALANCE	0.00
		PRINCIPAL: CASH	0.00
		PRINCIPAL: PURCHASES	0.00
		PRINCIPAL: BALANCE TRANSFERS	0.00
tran date	post date		
Aug 3	Aug 3	LATE FEE	29.00
Aug 3	Aug 3	OVERLIMIT FEE	29.00

EXHIBIT

Please see following page for additional information. Overlimit? Call 1-800-DISCOVER(1-800-347-2683) or log on to Discovercard.com



NEAL W SCHMIDT
account number 35481

Please feel free to call our toll-free Discover® Cardmember Service anytime if you have questions or concerns about your Account, any of your Discover Card benefits, or any other aspect of your membership. We're here to help.

Call our toll-free Cardmember Service Number:

1-800-DISCOVER

(1-800-347-2683)

24 hours a day, 7 days a week

Closing Date: August 31, 2003

page 2 of 3

	Average Daily Balances	Daily Periodic Rates	Nominal ANNUAL PERCENTAGE RATES	ANNUAL PERCENTAGE RATES	Periodic FINANCE CHARGES	Transaction Fee FINANCE CHARGES
current billing period: 28 days						
Purchases	\$0	0.06025%	21.99% F	21.99%	\$0	none
Cash Advances	\$0	0.06025%	21.99% F	21.99%	\$0	\$0

The rates that apply to your Account are either fixed (F) or they may vary (V), as noted above.

Questions? Call 1-800-DISCOVER (1-800-347-2683) or log on to Discovercard.com. For TDD (Telecommunication Device for the Deaf) assistance, see reverse side. Send billing error notice to: Discover Card; P.O. Box 15192; Wilmington, DE 19850-5192.

Exh. NWS-103, page 6 of 6 pages

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Discover Financial Services, Inc.,)

Civil No. 06-C-0284

Plaintiff,)

vs.)

JUDGMENT OF DISMISSAL

Neal W. Schmidt,)

Defendant.)

'The Plaintiff having filed a motion to dismiss, and the Court having duly entered an order for Judgment of Dismissal, it is now, in accordance with said Order for Judgment,

ORDERED, ADJUDGED AND DECREED that the above entitled action be, and the same is hereby dismissed with prejudice and without costs to any of the parties.

Dated this 29th day of November, 2006.


Clerk of the District Court

RECEIVED & FILED

NOV 29 2006

Clk. of Crt. Burleigh Co.

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Exh. NWS-104